

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16068 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SHYAM TELECOM LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16068 of 2004
SINGHI & CO for Petitioner No. 1
Mr. MR Mengdey, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 22/12/2004

ORAL JUDGEMENT

Rule. Mr. MR Mengdey, learned AGP waives service of Rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. In this matter under Article 226/227 of the Constitution of India, the petitioner has challenged the

order dated 24th August 2004 passed by the Deputy Collector, Stamp Duty Valuation, Gandhinagar, by which on the basis of some audit objection the petitioner is directed to pay the stamp duty as mentioned in the order dated 24.8.2004 with regard to the document in question, i.e. Debenture Trust Deed. Number of contentions are raised in the present Special Civil Application with regard to jurisdiction and even applicability of the notification. It is also submitted by the learned counsel appearing on behalf of the petitioner that even otherwise the impugned order dated 24.8.2004 is passed without giving an opportunity and without issuing any show cause notice and the same is in breach of principles of natural justice.

3. Shri MR Mengdey, learned AGP appears on behalf of the respondents. No affidavit-in-reply is filed on behalf of the respondents. Even otherwise the factum of not giving an opportunity to the petitioner before passing the impugned order dated 24.8.2004 is not disputed. Under the circumstances, without going into the larger question with regard to jurisdiction and applicability of the notification or not, and without considering anything on merits, the impugned order dated 24.8.2004 is required to be quashed and set aside only on the ground that the impugned order is passed without giving any opportunity to the petitioner and without issuing any show cause notice. When the order is passed leading to civil consequences by which the petitioner is directed to pay the stamp duty which is for a substantial amount, at least the petitioner is required to be served with a show cause notice and is required to be given an opportunity of being heard.

4. Under the circumstances, the impugned order dated 24.8.2004 is hereby quashed and set aside. It will be open for the respondent to issue appropriate show cause notice in accordance with law. It will be open for the petitioner to either file reply to such show cause notice and/or even to file petition challenging such show cause notice, if so advised questioning the jurisdiction of the respondents. As stated above, this Court has not expressed anything on merits of the case on either side and the impugned order is set aside only on the ground that the same is passed without giving any opportunity to the petitioner and without issuing any show cause notice. The petitioner is at liberty to take all contentions which are available to them under the law and as and when fresh show cause notice is issued.

5. For the reasons stated above, the petition is

allowed. Rule is made absolute to the aforesaid extent
with no order as to costs.

[M.R. Shah, J.]
rmr.